IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

FRANCIS GRANDINETTI §

VS. § CIVIL ACTION NO. 1:96cv101

GEORGE IRANON §

MEMORANDUM OPINION AND ORDER

On September 11, 2006, the court entered an order denying a motion for reconsideration filed by plaintiff. On September 28, 2006, the copy of the order sent to plaintiff was returned to the court as undeliverable. On October 27, 2006, plaintiff filed a motion (doc. no. 50) which in essence seeks an extension of time to file a notice of appeal concerning the order denying his motion for reconsideration. In his motion, plaintiff states that when the court resent the order to him, he received the order on October 13. He states he filed his motion with the court within 30 days of date on which he actually received the order.

<u>Analysis</u>

As a general rule, a notice of appeal in a civil case must be filed within thirty days after the judgment is entered. FED.

R. App. P. 4(a)(1). Upon a showing of excusable neglect or good cause, the district court may extend the time for filing a notice

The first sentence of Rule 4(a)(1) provides as follows: "Except as provided in paragraph (a)(4) of this Rule, in a civil case in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 must be filed with the clerk of the district court within 30 days after the date of entry of the judgment or order appealed from" Plaintiff states he should have 60 days to file his notice of appeal because the United States intervened in this matter. However, there is no indication in the record that the United States ever filed an appearance in this case.

of appeal upon motion filed within thirty days after the expiration of the time to file a notice of appeal. FED. R. App. P. 4(a)(5).

As plaintiff did not receive the court's order until after the period of time for filing a notice of appeal expired, the court is of the opinion he has shown both good cause and excusable neglect for not filing a timely notice of appeal. His motion will therefore be granted

ORDER

For the reasons set forth above, plaintiff's motion seeking an extension of time to file a notice of appeal is **GRANTED**.

Plaintiff shall have 10 days from the date set forth below to file a notice of appeal.

SIGNED this <u>17</u> day of <u>September</u>, 2007.

KEITH F. GIBLIN

UNITED STATES MAGISTRATE JUDGE

The first and fourth sentences of Rule 4(a)(5) provide as follows:
"The district court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by this Rule 4(a)... No such extension shall exceed 30 days past such prescribed time or 10 days from the date of the entry of the order granting the motion, whichever occurs later."